

Classification and Pay Administration

Pay and Compensation

**Summary of Changes.** This regulation establishes the pay and compensation policy for California National Guard technicians. It replaces the Technician Personnel Manual, Chapter 4, dated Mar 2000.

**Applicability.** California National Guard Full-time Personnel Regulation (CNGFPR) applies to all California Army and Air National Guard technicians and to commanders, managers and supervisors (military or civilian) with authority or responsibility over technician personnel management.

**Proponent and Exception Authority.** The proponent of this regulation is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulations.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

**Distribution.** Distribution of the regulation is Army - A and Air Force - F.

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1. Purpose.

This full-time personnel regulation establishes the guidelines regarding the pay and compensation policy as prescribed by 5 Code of Federal Regulations for the California National Guard.

2. References.

This FPR does not duplicate the provisions and rules found in statutes, Code of Federal Regulations, or other directives cited below. This regulation must be used in conjunction with the references listed below:

- a. Title 5, United States Code (USC), Section 5305.
- b. Title 5, Code of Federal Regulations (CFR) Parts 203; 530; 531; 532; 550.
- c. OPM FWS Operating Manual, S-8-3e.
- d. DoD 1400.25-M, Subchapter 531.

### **3. Pay Limitations.**

In accordance with 32 U.S.C. § 709, the California National Guard adheres to Title 5 pay limitations.

#### **a. Aggregate Limitation on Pay.**

(1) Annual Limit - See 5 CFR 530.203(a).

(2) Bi-Weekly Limit - See 5 CFR 550.105.

#### **b. Limitation on Locality Pay.** See 5 CFR 531.604(b).

#### **c. Limitation on Special Pay.** See 5 CFR 530.303(a).

### **4. Special Pay Rates.**

a. When local conditions render the statutory rates inadequate for the purpose of recruiting and retaining qualified technicians, payment of Special Rates may be sought to redress the disparity. Typically, Special Pay Rates are requested for an occupation, or a group of related occupations, for which there are demonstrable recruiting and retention problems.

b. The Human Resource Office, under authority delegated by The Adjutant General, is responsible for advising local Commanding Officers and Supervisors regarding the availability and procedures regarding Special Rate requests.

c. All requests for special pay rates must be submitted through the Human Resource Office, and be approved by The Adjutant General, before being submitted to NGB-HR for review and concurrence. With HRO coordination, the local Commanding Officer must certify all data submitted. The data must be no older than 30 days at the time of submission to the HRO and no older than 60 days at the time of submission to NGB-HR. NGB will forward the request to OPM, through DoD, for final approval.

### **5. General Pay Fixing Rules.**

#### **a. Initial Pay Setting.**

(1) For all initial appointments under normal hiring practices, pay shall be set at Step 01 of the appropriate Grade. (5 CFR 531.203(a)).

(2) Superior or Special Qualifications Appointments (5 CFR 531.203(b); 5 CFR 532.403(b)). For appointments made in situations where the individual hired has qualifications well above the minimum requirement (e.g., many years of experience in the same occupation in the private sector or related Active Duty service) pay may be set at a rate that neither exceeds the maximum step nor the NGB limitation stated in paragraph (3) below. To compute the differences between military and Dual Status technician pay, Military Basic Pay, plus the Basic Allowances for Housing and Subsistence should be compared with the appropriate Federal Wage Area (annualized), GS Locality, or GS Basic plus COLA schedule for the technician grade, plus annual total M-day payments. All Special or Superior Qualifications appointments must be fully documented in the individual's personnel file.

(3) Limitations. The Human Resources Office may approve a Superior or Special Qualifications appointment at amounts up to no more than 20% above the candidate's current actual earnings

#### **b. Movement within Pay Systems.**

(1) GS Promotions (5 USC 5334(b), 5 CFR 531.204). When promoting within the GS system, the new pay rate must be equivalent to at least the value of two steps in the current grade. This is required by Statute, not by Regulation.

(2) FWS Promotions (5 CFR 532.407). When promoting within the FWS system, the new rate must exceed the existing rate by at least 4% of the Representative rate (Step 02) of the existing grade.

c. Change to Lower Grade. For change to lower grade actions that are not at the technician's request, and are not for cause (conduct, character, or unacceptable performance), Grade and Pay Retention rules may apply. For change to lower grade that is for cause, or which is not covered by Grade or Pay Retention, pay is set at the highest rate in the lower grade which does not exceed the current rate of pay, and will not result in a pay rate higher than the current rate upon re-promotion. Pay Retention is not authorized when a change to lower grade is for cause. For change to lower grade at the technician's request, pay retention may be approved by the HRO when the action is beneficial to the agency.

d. Simultaneous Benefits Rule. (5CFR 531.203(f)). If a personnel action is effective the same date as a nationwide General Schedule rate adjustment, the simultaneous benefits rule is not for application. In those cases, the Annual Adjustment is processed first, followed by any other pay actions. For example, if a special rate schedule is terminated and made effective the same date as the nationwide GS Schedule Increase, the employee's existing rate of pay, (i.e. special rate,) will be slotted in the grade/step to which assigned using the new GS pay table.

e. Movement between Pay Systems.

(1) Movement from FWS to GS. Upon movement from a Federal Wage System (FWS) position to a General Schedule (GS) position, a technician's rate of basic pay (excluding GS locality pay) may be set using the GS maximum payable rate rule. Representative rates are not considered in pay setting from FWS to GS. See 5 CFR 531.203(d).

(2) Movement from GS to FWS. Upon movement from a General Schedule (GS) position to a Federal Wage System (FWS) position, a technician's rate of basic pay will be based upon the Nature of Action. The Nature of Action is determined based upon a comparison of representative rates. Reassignments and changes to lower grade will be set using the technician's base GS rate (excluding GS locality pay), and may be set using the highest previous rate rule. Promotions are subject to the FWS mandatory promotion rule at 5 CFR 532.407.

**6. General Schedule (GS) Highest Previous Rate/Maximum Payable Rate.**

a. Definitions.

(1) Existing Rate of Basic Pay. The rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase (5 CFR 531.202).

(2) Highest Previous Rate (HPR). The highest actual rate of basic pay while federally employed or the actual rate of basic pay for the highest GS grade and step previously held by an individual (5 CFR 531.202).

(3) Maximum Payable Rate (MPR). The highest amount at which an employee's pay may be set when the highest previous rate is considered (5 CFR 531.203(c)).

b. Regulations. Maximum payable rate rules establish the highest amount the California National Guard may pay an employee upon reemployment, transfer, reassignment, promotion, demotion, or change of appointment. The maximum payable rate is based on an employee's highest previously earned rate of pay. The rate must meet certain requirements to be a bona fide highest previous rate. The California National Guard is allowed to formulate its own policy regarding the application of MPR/HPR rules in setting pay (DoD 1400.25-M, Subchapter 531, Section B.2).

c. GS HPR Requirement.

(1) Highest previous rate is based on a rate earned during a regular tour of duty (full-time or part time, not intermittent), and under an appointment not limited to 90 days or less, or for a continuous period not less than 90 days under one or more appointments (5 CFR 531.203(d)(1)). Previously employed Federal technicians who are re-employed, transferred, promoted, reassigned, demoted or changed in their appointment type may be considered for placement on the pay scale at any rate which is applicable to the position that does not exceed their HPR. If the HPR falls between two steps of the new grade, they may be considered for the higher step. The rate of pay cannot exceed the maximum step for the grade of the new position.

(2) Highest previous rate may not be based on a rate received under a void appointment, on a temporary promotion for less than one year (except on permanent placement at the same or higher grade), by a District of Columbia employee first hired on or after 1 October 1987, during a period of interim relief, as an expert or consultant, or in a position from which the employee was reduced in grade as a result of an unsuccessful supervisory probation period (5 CFR 531.203 (d)(2)). Additionally, HPR will not be used after a break in service of ten (10) years or more (salary will be set at step 1 of the grade), for a change to lower grade for cause based on character, conduct, inefficiency or failure to meet a requirement of the position (salary will be set at a rate in the lower grade where, on later promotion, the technician's pay will not be higher than it would have been without the change to lower grade), or for a voluntary request for change to lower grade in response to a merit announcement with promotion potential (salary will be set at a rate in the lower grade where, on later promotion, the technician's pay will not be higher than it would have been without the voluntary change to lower grade). This is commonly referred to as "stair stepping".

d. Moving From FWS to GS Position. The pay setting rules of the gaining pay system are used, i.e., GS HPR rules. Annualize the hourly highest previous rate and compare the annualized rate with the GS pay table current at the time the rate was earned.

e. Effects of Special Salary Rates (SSR). The highest previous rate may not be based on a special salary rate unless the employee is reassigned to a non-special rate or lower special rate position within the Department of Defense, officials document that the employee's contribution will be greater in the new position, and the employees current rate is a SSR (5 CFR 531.203(d)(2)(vii)).

**7. Federal Wage System (FWS) Highest Previous Rate.**

a. Definitions.

(1) Existing Scheduled Rate of Pay. The scheduled rate of pay received immediately before the effective date of a transfer, reassignment, promotion, change to lower grade, within-grade increase, or revision of a wage schedule (5 CFR 532.401).

(2) Highest Previous Rate (HPR). The highest scheduled rate of pay previously paid to a person while employed in a job in any branch of the Federal Government, a mixed-ownership corporation, or the District of Columbia government, regardless whether the job was subject to a wage schedule (5 CFR 532.401).

b. Regulation. The California National Guard may use HPR to set pay when an employee is re-employed, reassigned, transferred, promoted, changed to a lower grade, or converted to a different appointment in the same job. Use of HPR rules is discretionary. The HPR is based on an employee's highest previously earned rate of pay. However, the rate must meet certain requirements to be a bona fide HPR (5 CFR 532.405).

c. FWS HPR Requirements. The highest previous rate is based on a rate earned on a regular tour of duty (full-time or part time, not intermittent), and under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one (1) or more appointments, and on a temporary promotion exceeding one (1) year, unless permanently placed in a position at the same or higher grade (5 CFR 532.401, 5 CFR 532.405 (d)). The highest previous rate may not be based on a rate earned as an expert or consultant, a special salary rate under 5 USC 5305, or appointments made above the minimum rate (e.g. special qualifications appointments, amended schedules, special schedules, and special rates). (OPM FWS Operating Manual, S8-3e). Additionally, HPR will not be used after a break in service of ten (10) years or more (salary will be set at step 1 of the grade), for a change to lower grade for cause based on character, conduct, inefficiency or failure to meet a requirement of the position (salary will be set at a rate in the lower grade where, on later promotion, the technician's pay will not be higher than it would have been without the change to lower grade), or for a voluntary request for change to lower grade in response to a merit announcement with promotion potential (salary will be set at a rate in the lower grade where, on later promotion, the technician's pay will not be higher than it would have been without the voluntary change to lower grade). This is also referred to as "stair stepping".

d. Moving From GS to FWS Position. The pay setting rules of the gaining pay system are used, i.e., the FWS HPR rules. When an employee's HPR is earned under the GS pay system or under another pay system, the HPR is the current rate for the same grade and step rate of that schedule.

#### **8. Discretionary Use of Highest Previous Rate Rules.**

The use of HPR rules is discretionary (5 CFR 531.203(c)). Some factors which can be considered are how the experience from the HPR relates to the new position and pay equity among technicians within the same unit or workgroup. Other factors may be considered. The Staffing Specialist(s) in the Human Resources Office will determine the use and applicability of HPR rules.

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